

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1003 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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HEIRS OF DECEASED DURLABHBHAI BECHARBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR PM BHATT for Petitioners

MR TH SOMPURA, AGP for Respondent No. 1, 2, 3,  
Respondent no. 4 served

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 14/02/97

ORAL JUDGEMENT

The present petition, in the facts and circumstances annexed to it, requires a recognition and the matter requires to be remanded to the Competent Authority.

One Durlabhbhai Becharbhai, a resident of village Pandesara, under the Surat District, had submitted the necessary form under ULC Act, 1976. The orders came to be passed by the Competent Authority, declaring an area of 750 sq.mtrs. as the excess vacant land. This has happened, vide orders passed by the Competent Authority, on July 25, 1984. There is a reference in the orders saying that the land holder was given a written intimation regarding the date of the hearing, but that he had failed to appear in person and, therefore, the matter was required to be decided and disposed of ex-parte. These orders dated July 25, 1985 were taken before the Tribunal in Appeal No. Surat/44/93 which came to be decided and dismissed under the orders dated January 17, 1997. The appeal came to be dismissed on the ground of the same being barred by law of Limitation and on merits also. It was pointed out to the Tribunal that, no opportunity of being heard was given to the land lord and that, at any rate, the orders of the Competent Authority can be said to be nullity because, the same have been passed against a deceased person, namely, Durlabhbhai, who had expired on February 23, 1981. The learned Tribunal has no opinion to express on these two vital aspects of the matter.

It is clear that deceased Durlabhbhai had expired on February 23, 1981. The Competent Authority has declared the excess vacant land under the orders dated July 25, 1984. One may urge that, probably, the Competent Authority might not be aware of this fact, but it requires to be appreciated that this fact was pointed out to the notice of the Tribunal and yet, unfortunately, there is no finding on that.

It requires to be accepted that, the orders have been passed against a dead man and that also, without giving the appropriate opportunity of hearing to the petitioners, who were the heirs and legal representatives of the deceased. Because of these two aspects, the present petition requires to be allowed and both the orders of the Tribunal and the Competent Authority require to be quashed and set aside. I order accordingly. The matter shall stand remitted to the Competent Authority to decide it afresh according to law on merits, after affording a reasonable opportunity of being heard to the present petitioners. This should be done as expeditiously as possible, and within a period of six months from the receipt of the writ of the present orders. Rule is made absolute to the above said extent, with no order as to costs.

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